

REMARKS/ARGUMENTS

A restriction requirement has been asserted between Group I and Group II of the claims. Applicant provisionally elects Group I incorporating claims 1-47. That election is made with traverse.

Section 121 of the Patent Statute authorizes a requirement for a restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of Group I and the invention defined by the claims of Group II may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirement in definite terms. The construction adopted by the Manual of Patenting Examining Procedure assumes that the Statute authorizes restriction between inventions which are not independent and distinct but which are either independent or distinct. It is applicant's position that the plain meaning of the Statute defies such construction. For this reason, applicant requests that the restriction requirement be withdrawn so that all the claims may be prosecuted as a single invention.

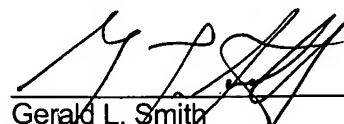
The MPEP [is] commonly relied upon as a guide to patent attorneys and patent examiners on procedural matter." *Litton Sys., Inc. v Whirlpool Corp.*, 728 F.2d 1423, 1439, 221 USPQ 97, 107 (Fed. Cir. 1984). While they MPEP does not have the force of law, it is entitled to judicial notice as an official interpretation of statutes or regulations as long as it is not in conflict therewith. *Id.* at 1439, 221 USPQ at 107.

Molins PLC v. Textron Inc., 48 F 3rd 1172, 1180, n. 10, 33 USPQ 2d 1823 (CAFC 1995). Emphasis added.

Typographical error in the specification and claims have been corrected by preliminary amendment.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited on January 18, 2005
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